

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In RE:

RESIDENTIAL CAPITAL, LLC, et al.,
Post-Effective Date Debtors

Chapter 11
Case No. 12-12020-mg

RICHARD D. RODE,
Creditor-Beneficiary

-against-

RESCAP BORROWER CLAIMS TRUST, and
RESCAP LIQUIDATING TRUST,
Objectors

VERIFIED
OBJECTION TO PROPOSED PRE-TRIAL ORDER OF
THE RESCAP LIQUIDATING TRUST AND THE RESCAP BORROWER CLAIMS TRUST
PURPORTING TO HAVE CONFERRED WITH COUNSEL FOR CLAIMANT

Richard D. Rode (Claimant), by his attorney Wendy Alison Nora of ACCESS LEGAL SERVICES, having reviewed the proposed Pre-Trial Order submitted on June 17, 2016 at 4:46 p.m. and shows the Court:

1. On June 10, 2016, counsel for Mr. Rode filed a Motion for Relief from the Scheduling Order entered on May 10, 2016 (Doc. 9931), in part, based on surprise at the Objector's reliance on the purported securitization of Mr. Rode's Note and Deed of Trust (collateral documents) which she had not been prepared to address, based on this Court's Decisions limiting the issue for evidentiary hearing to the claim of breach of contract in its Interlocutory Order of September 2, 2015 (Doc. 9094). (See ¶¶5-7 of the Motion for Relief, Doc. 9931).
2. On June 9, 2016, counsel for Mr. Rode was taken ill (see July 17, 2016 Declaration in

Support of Motion for Relief, Doc. 9942 at 4:23 p.m. EDT) and she advised counsel for the Objectors on June 10, 2016 at 5:10 p.m. CDT (6:10 p.m. EDT) that she was confined to bed shortly after filing the Motion for Relief. (See Exhibit A: June 10, 2016 email from Attorney Nora to Attorney Richards.)

3. Attorney Nora's illness persisted through June 20, 2016.

4. On June 17, 2016, she attempted to communicate with counsel for the Objectors (see Exhibits B: partially transcribed June 17, 2016 9:42 a.m. CDT/10:42 a.m. EDT voice mail from Attorney Richards to Attorney Nora and C: June Email from Attorney Nora to Attorney Richards at 10:36 a.m. CDT/11:36 a.m. EDT) and thereafter, at 4:23 p.m. EDT (3:23 p.m. CDT), she filed her Declaration in Support of the Motion for Relief (Doc. 9942) which, for the first time, disclosed her acute health condition.

5. On June 17, 2016, at 4:46 p.m. EDT, the Objectors filed their Proposed Pre-Trial Order which recites:

The Trust and Claimant having conferred, and having conferred with the Court pursuant to Fed. R. Civ. P. 16, the following statements, directions and agreements are adopted as the Pretrial Order herein.

6. The Trust and the Claimant did not confer and did not agree to have the Court adopt the statements, directions and agreements contained in the Proposed Pre-Trial Order (Doc. 9944).

7. Mr. Rode's only contribution to the Proposed Pre-Trial Order was his correction of the error contained in the first draft of the Proposed Pre-Trial Order in his Motion for Relief from the provisions of the May 10, 2016 Scheduling Order (Doc. 9931) which is in the form of the Transcript of the Conference held on that date at ¶14, which reads:

14. Counsel for Mr. Rode is not alone in having inaccurate notes or at least not reading

her notes accurately, however, because paragraph IX., B.¹ of the Proposed Pre-Trial Order reads:

IX.² EVIDENTIARY HEARING PROCEDURES

B. “Timed” Trial

The Trial will be a “timed trial,” with a maximum of [6]-trial hours during the course of each day. Each side will be allocated a maximum of [12]-trial hours to use for opening statement, all direct, cross-examination and redirect witness examinations, and summation. Counsel is responsible for having her or his witnesses present and ready to testify without any delays or gaps in testimony.

and which the Trust corrected to provide at Section X:

The Trial shall take place on August 15, 2016 through August 18, 2016 beginning at 9:00 a.m. prevailing Eastern Time each day.

8. It is apparent that Mr. Rode did not contribute to the Proposed Pre-Trial Order because the Sections reserved for Claimant’s Description of the Nature of the Case at Section I., B. Claimant’s Contentions at Section IV.A., Claimant’s Exhibits at Section VI.A., Claimant’s Witnesses at Section VIII.A. and the Relief Requested by Claimant (Section IX.A.) are blank and denoted in brackets: [].

9. Moreover, Mr. Rode has not stipulated to the facts set forth by the Objectors at Section II and the purported representation to the contrary is as false as the assertion that the parties have met and conferred because the Objectors are well aware that Mr. Rode was seeking additional time to prepare the Joint Pre-Trial Order.

10. That the Objectors filed a Pre-Trial Order purporting to have conferred with counsel for Mr. Rode in the preliminary recitals and that Mr. Rode stipulated to the facts set forth in Section II is a misrepresentation to this Court.

¹ Because counsel for Mr. Rode was ill when she wrote the Motion for Relief on June 10, 2016 she typed Section IX.B., which should have been Section XI.B.

² *Id.*

11. Counsel for Mr. Rode was informed that the Objectors would be filing its Proposed Pre-Trial Order by the voice mail of Erica Richards, one of the attorneys for the Objectors, at 9:42 CDT (10:42 EDT) a.m. on June 17, 2016, which has been transcribed, in part, as Exhibit B, and reads, in part:

I don't think we are able to consent to adjourned date with you I think that's a matter for the court and given that today was the deadline set by the court to file the pre-trial order. We're planning to go ahead and file our half because we don't wanna violate the deadline is already set by the court.

12. Only the Objectors' "half" of the proposed Pre-Trial Order could have lawfully and ethically been filed and any appearance that Mr. Rode agreed to any part of the Proposed Pre-Trial Order (Doc. 9944) (except the corrected allotment of time for trial) is a misrepresentation to the Court.

13. Counsel for Mr. Rode cannot assume that the misrepresentation is simply a word processing error (although it could be and she hopes it was because she has never had a reasonable suspicion of any perfidy on the part of Ms. Richards) because the correction to Section X previously misstated in Section IX of the first draft of the Proposed Pre-Trial Conference Order as to the allotted time for trial was contributed by counsel for Mr. Rode.

14. A short extension of time to allow Mr. Rode to actually confer with counsel for the Objectors or to have the parties file separate Proposed Pre-Trial Conference Orders will be sought at the Scheduling Conference set for today at 10:00 a.m. EDT, but the Stipulated Facts (Section II.) of the Objectors' Order must be removed forthwith.

WHEREFORE, Mr. Rode objects to the Proposed Pre-Trial Order filed by the Objectors as Doc. 9944 and requests leave to actually confer with counsel for the Objectors or, in the alternative, to have Section II of the Objectors' Proposed Order removed and for leave to file Mr.

Rode's separate Proposed Pre-Trial Order.

Dated at Minneapolis, Minnesota this 23rd day of June, 2016.

/s/ Wendy Alison Nora

Wendy Alison Nora
ACCESS LEGAL SERVICES
310 Fourth Avenue South, Suite 5010
Minneapolis, Minnesota 55415
Telephone: (612) 333-4144
Facsimile: (612) 203-3170
E-mail: accesslegalservices@gmail.com
WI BAR #1017043
MN BAR #165906

DECLARATION UNDER PENALTY OF PERJURY

Wendy Alison Nora declares, under penalty of perjury pursuant to 28 U.S.C. sec. 1746 that the facts set forth in the foregoing Objection are true and correct to the best her knowledge, information and belief and that Exhibits A, B and C are true and correct copies of what they purport to be.

/s/ Wendy Alison Nora

Wendy Alison Nora

DECLARATION OF SERVICE

Wendy Alison Nora declares, under penalty of perjury, that she filed the foregoing Objection by CM/ECF on June 23, 2016 and thereby served all parties capable of service by CM/ECF.

/s/ Wendy Alison Nora

Wendy Alison Nora

EXHIBIT A



Wendy Alison Nora <accesslegalservices@gmail.com>

Re: In re Residential Capital, LLC, No. 12-12020 - Rode pretrial order

1 message

Wendy Alison Nora <accesslegalservices@gmail.com>

Fri, Jun 10, 2016 at 5:10 PM

To: "Richards, Erica J." <ERichards@mofo.com>

Bcc: Rich <richrode@att.net>

Erica,

I would have discussed the situation with you, if I were not fearful of the chambers rule requiring extension to be sought 5 days before the date of the required action. At least that is how I remember it. I have a really bad cold and am in bed right now. I will respond more thoroughly tomorrow.

Have a good weekend.

Wendy

On Fri, Jun 10, 2016 at 4:39 PM, Richards, Erica J. <ERichards@mofo.com> wrote:

Wendy,

We were surprised to see the motion for an extension you just filed, and in particular your uncertainty regarding the June 17th deadline since you never raised it with us. Attached is a transcript of the May 10th status conference, during which the Court twice reiterated the June 17th deadline, and you raised no questions or concerns regarding that date—I refer to you page 6, line 25 through page 7, lines 7-8.

Notwithstanding your request for an extension of time in which to file the pre-trial order, please let me know if the other proposed dates set forth in section X of the order are acceptable.

Thank you,

Erica

Erica Richards

Morrison & Foerster LLP

250 West 55th Street | New York, NY 10019-9601

P: +1 (212) 336.4320 | F: +1 (212) 468.7900

ERichards@mofo.com | www.mofo.com

From: Wendy Alison Nora [mailto:accesslegalservices@gmail.com]
Sent: Wednesday, June 08, 2016 4:07 PM
To: Richards, Erica J.
Subject: In re Residential Capital, LLC, No. 12-12020 - Rode pretrial order

Dear Erica,

I have been on brutal deadlines. I just now forwarded your email to Rich and asked him to call me in the morning before he leaves for work.

The Friday, June 10, 2016 deadline is aspirational, but we have to draft all of our issues and contentions, so it is not necessarily feasible. Monday, June 13, 2016 is more likely.

Thank you,

Wendy

On Wed, Jun 8, 2016 at 2:55 PM, Richards, Erica J. <ERichards@mofo.com> wrote:

Wendy,

We haven't heard from you—please confirm that you received the draft order and will be in a position to send us your comments by this Friday.

Thank you,

Erica

Erica Richards

Morrison & Foerster LLP

250 West 55th Street | New York, NY 10019-9601

P: [+1 \(212\) 336.4320](tel:+1(212)336.4320) | F: [+1 \(212\) 468.7900](tel:+1(212)468.7900)

ERichards@mofo.com | www.mofo.com

From: Richards, Erica J.
Sent: Friday, June 03, 2016 9:35 AM
To: accesslegalservices@gmail.com
Cc: Rosenbaum, Norman S.; Wishnew, Jordan A.
Subject: In re Residential Capital, LLC, No. 12-12020 - Rode pretrial order

Attached is a draft of the joint pretrial order for the Rode claims objection, which is due to be filed by June 17th. Please add your sections and comments and return it to us by next Friday, June 10th, so we have time to review your revisions with our client and to try to resolve any issues with you in advance of the filing deadline.

If you want to discuss the proposed schedule or any other issues in the meantime, please let me know and we can set up a call to discuss.

Regards,

Erica

Erica Richards

Morrison & Foerster LLP

250 West 55th Street | New York, NY 10019-9601

P: +1 (212) 336.4320 | F: +1 (212) 468.7900

ERichards@mfo.com | www.mfo.com

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Attorney Wendy Alison Nora
ACCESS LEGAL SERVICES
310 Fourth Ave. S., Suite 5010
Minneapolis, Minnesota 55415
VOICE: [\(612\) 333-4144](tel:(612)333-4144)
FAX: [\(612\) 206-3170](tel:(612)206-3170)
accesslegalservices@gmail.com
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Attorney Wendy Alison Nora
ACCESS LEGAL SERVICES
310 Fourth Ave. S., Suite 5010
Minneapolis, Minnesota 55415
VOICE: (612) 333-4144
FAX: (612) 206-3170
accesslegalservices@gmail.com
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EXHIBIT B



Wendy Alison Nora <accesslegalservices@gmail.com>

Vonage Visual Voicemail from 12124688000 - New Voicemail Received

1 message

12124688000@vm.vonage.com <12124688000@vm.vonage.com>

Fri, Jun 17, 2016 at 9:43 AM

Reply-To: donotreply@vonage.com

To: accesslegalservices@gmail.com

Date : Jun 17 2016 09:42:44 AM

From : NY (12124688000)

To : WENDY NORA (16123334144)

"Hi Wendy it's Erica Richards at Morrison and Forster returning your call from this morning. I'm actually jumping into calls and telephonic conference is starting in about 15 minutes and so I'll be unavailable until this afternoon but just want to let you know you know I don't I don't think we are able to consent to adjourned(?) date with you I think that's a matter for the court and given that today was the deadline set by the court to file the pre-trial order. We're planning to go ahead and file our half because we don't wanna violate the deadline is already set by the court. You know I can certainly discuss with you if you have revised proposed dates about whether those would be acceptable. We can discuss those and then raise them with the court on next weeks telephone conference scheduled for the 22nd."

... more. Please listen to your voicemail for the remainder of this message.

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EXHIBIT C



Wendy Alison Nora <accesslegalservices@gmail.com>

Rode: Joint Pre-Trial Order

1 message

Wendy Alison Nora <accesslegalservices@gmail.com>
To: "Richards, Erica J." <ERichards@mofo.com>

Fri, Jun 17, 2016 at 10:36 AM

Thanks for getting back to me.
I will try to connect with you this afternoon.

--
Attorney Wendy Alison Nora
ACCESS LEGAL SERVICES
310 Fourth Ave. S., Suite 5010
Minneapolis, Minnesota 55415
VOICE: (612) 333-4144
FAX: (612) 206-3170
accesslegalservices@gmail.com
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